

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

PATRICK MCKENNA	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP17-21-005044
	§	
	§	
MIKE MOCK	§	
Defendant Below,	§	
Appellant	§	

TRIAL DE NOVO

Submitted: January 11, 2022

Decided: January 14, 2022

**APPEARANCES:**

PATRICK MCKENNA

MIKE MOCK

William P Wood, Justice of the Peace

Richard Comly, Justice of the Peace

John Martin, Senior Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**CIVIL ACTION NO: JP17-21-005044**

**PATRICK MCKENNA VS MIKE MOCK**

**ORDER ON TRIAL DE NOVO**

The Court has entered a judgment or order in the following form:

This action was filed by Plaintiff (hereinafter McKenna) as a Forthwith Summons pursuant to 25 Del C §5115 averring that he had been locked out of his rental unit. The matter was decided in favor of Plaintiff; Defendant (hereinafter Mock) appealed and now the case is before a three judge panel (Judges Comly, Martin and Wood). The appeal is De Novo and the panel heard a new trial on January 11. The facts are mostly undisputed. Mock previously rented the unit involved in this matter to a tenant named Tony Pasta. McKenna was an occupant of the unit during Pasta's tenancy. Mock filed an action to evict Mr. Pasta on October 18, 2021. Judgment by Admission was entered against Mr. Pasta on October 29, 2021.

On October 30, 2021 Mock sent McKenna a text message that stated Pasta was going to be out of the unit and "Also, I am going to charge you 1,700 per month, beginning with a 90 day agreement. We will see if it is going to stick, and if so, continue on a month to month basis." On November 2, 2021 Mock sent another text at 4:06 pm stating, in pertinent part, "You need to declare whether you are staying or going. If you don't answer I will assume you are leaving." At 5:53 pm on November 2, McKenna responded, "I'm staying." On November 3, Mock texted "That's good. You will need \$1,700 for a security deposit and around \$800 rent for the balance of November. I need to know if Tony (Pasta) is moving his stuff or I will need to get the constable to move him out."

According to the text messages, McKenna paid the \$800.00 for November on or before November 12. Mock also demanded, again via text, that the unit be cleaned up or there would be no agreement and he would sell the house. McKenna cleaned the unit out and Mock expressed his satisfaction on November 14. Mock had not received the security deposit nor December's rent as he had requested from McKenna so he allowed the Court's constables to proceed with changing the locks on the rental unit on December 1, 2021, constructively ousting McKenna and creating the cause for this action.

The case at bar is somewhat unique in that Mock obtained judgment for possession against his tenant (Pasta) and entered into another agreement with McKenna to lease the property for twenty days and/or an agreement for a ninety day term during the period of time he was pursuing a Writ of Possession. 25 Del C §5141(22) Delaware's Landlord Tenant Code (hereinafter the Code) defines a rental agreement and states "Rental Agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit. The parties to this action engaged in a rental agreement. But, Mock asserts that his agreements with McKenna are excluded under 25 Del C §5102(4), because the rental agreement was for 120 days or less and is located within the Lewes-Rehoboth Hundred. However, for that exclusion to apply, the agreement must also be nonrenewable. Clearly the intent of these agreements was to renew upon compliance; the exclusion under §5102 is not applicable. Mock also argues that the only lease consummated was only for approximately twenty days. Any renewal of lease was contingent upon payment of security deposit and one month's rent. From any reading of the Code, it is clear that the legislature did not contemplate parties entering an agreement for less

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than a month. However, §5301(a)(1) prohibits a rental agreement from requiring a tenant “to waive or forego rights or remedies under this Code.”

Accordingly, the majority of this Panel finds that Plaintiff, Patrick McKenna, has proven by preponderance of the evidence that a rental agreement exists between the parties and that he has a right to possession of the rental unit until such time as that agreement is terminated by the Justice of the Peace Court or until he vacates voluntarily.

IT IS SO ORDERED 14th day of January, 2022

/s/William P. Wood (SEAL)  
Justice of the Peace  
For the Three Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).